

Description for the Parents 12/10/05

JEI is a special kind of organization that was created under New York State law. It is both an “educational” corporation and also a “not-for-profit” corporation.

Educational Corporation – The Commissioner of Education

JEI was created by the New York State education agency, which issued the JEI a “charter,” which is like a constitution and a certificate of incorporation. The NYS educational agency is called the Regents of the University of the State of New York (also known as the “Board of Regents”). The Board of Regents carries out most of its activities through a bureaucracy called the State Education Department (SED). The chief executive officer of SED is the Commissioner of Education. The Board of Regents has the authority and responsibility to review the activities of JEI and to take action (or withhold approvals or privileges) if it thinks that JEI or its individual trustees are not governing the organization properly.

Not-for-Profit Corporation – The Attorney General of NYS

New York State has strong laws that are intended to promote good governance of not-for-profit corporations. For most not-for-profit corporations, the government official who has the primary responsibility to oversee and regulate not-for-profit corporations is the Attorney General of the State of New York.

Educational corporations like JEI are also considered not-for-profit organizations under New York State law. This means that JEI has to follow the standards and requirements of both the New York State Education Law and the New York State Not-for-Profit Corporation Law.

The Supreme Court of the State of New York

The highest court in New York State is called the “New York State Court of Appeals.” The justices of the state Supreme Court are given some specific powers to oversee the actions of educational corporations and not-for-profit corporations. We are most interested in one power. If an organization like JEI wants to sell substantially all of its assets, then JEI must ask the Supreme Court to issue an order giving it permission to go through with the sale. If the Supreme Court does not give its approval, the sale cannot go through. The Supreme Court has used its power in the past to stop some sales of property from happening. One of the best known cases was about 6 years ago, when a Supreme Court judge prevented a not-for-profit hospital in New York City from selling its main hospital building to another hospital.

JEI’s Proposed Sale of the Greenwich Campus

The PTA is opposed to JEI’s proposal to sell the Greenwich campus. Under the laws of New York State, the PTA has the opportunity to present its objections to all three

of the authorities described above – the Commissioner of Education, the Attorney General, and the Supreme Court. This is what the PTA will be doing.

If JEI follows the usual procedure and practice this is what JEI will do. JEI's attorneys will prepare a set of materials that it wants to present to the Supreme Court to convince a justice of the Supreme Court that he or she should approve the sale. Before filing the materials with the Supreme Court, JEI will give a copy to the Commissioner of Education and ask him to review the materials and to issue a decision that the proposed sale of the campus is appropriate. JEI will also give a copy of the materials to the Attorney General and ask the Attorney General to say that the proposal is okay. Next, JEI will go to the Supreme Court and ask for an order approving the sale. The Commissioner of Education and the Attorney General will each give a statement to the Supreme Court saying what each of them thinks about the JEI proposal.

The PTA's attorneys have notified the Commissioner and the Attorney General that the PTA opposes the sale and that the PTA wants to have an opportunity to review the proposed contract of sale and the other JEI materials and then present written opposition papers. The families of the children enrolled in the school are beneficiaries of JEI who have a special relationship to JEI. Therefore, the Commissioner and the Attorney General will listen to what the PTA has to say. We hope that we will convince both the Commissioner and the Attorney General to say "no" to the sale.

Regardless of whether the Commissioner or Attorney General says "no," "yes," or "abstain," JEI is allowed to take the next step and ask the Supreme Court for approval. It will make JEI's request much weaker, however, if the Commissioner and the Attorney General say "no." In the hospital case mentioned above, the Attorney General not only said "no," it went into court and fought very hard to convince the Court to say "no." So we hope to get the Commissioner and the Attorney General on our side.

The Commissioner, the Attorney General and the Supreme Court will look at several aspects of the proposed sale. In this kind of a case they will especially be concerned about whether the financial terms of the sale are fair to JEI, and whether the purposes of JEI as stated in its charter will be promoted by the sale. All of them will be concerned about whether proper procedures were followed within JEI to approve the plan and the contract, and whether there were any conflicts of interest or other integrity issues. The Commissioner will have the greatest expertise on the issue of whether educational purposes will be promoted.

The contract of sale between JEI and WFHA will almost certainly include a provision which says that the sale will not go through unless the Supreme Court approves of it. This kind of requirement is called a "contingency." If the Supreme Court says "no," then the contingency will not be satisfied and JEI will be under no contractual legal obligation to convey the Greenwich campus to WFHA.

It is impossible to predict what will happen next if the Supreme Court says "no." For example, it is possible that the Supreme Court will say that if there are certain

changes made in the contract of sale and in the JEI plans for JSNY, then it might reconsider JEI's request for approval. If that happens, then JEI and WFHA will have to decide whether those changes are acceptable to each of them.

Petition to Remove Trustees

One of the powers of the Board of Regents is to remove from office a trustee of an educational corporation who does not properly perform his or her duties. There is a procedure to file a petition with the Board setting forth allegations of improper behavior by a trustee, and asking the Board to conduct an investigation and to hold a trial regarding the charges. The Board also has the power to appoint new trustees to fill the places of ones that are removed. In one recent case the Board removed almost every single trustee of a major university and replaced them with individuals selected by the Board.

Retaliation Against the PTA and Its Members

Nearly six months ago the PTA's attorneys gave formal written notice to JEI that the PTA intended to make use of the legal procedures described above to inform government authorities of their opposition to JEI's plans to sell the Greenwich campus. More recently, formal notice was given that the PTA had authorized the submission of a petition to the Board of Regents for removal of some JEI trustees.

JEI's attorney has made generalized accusations that some PTA members have made statements that are defamatory and that "could constitute tortious interference with JEI's contractual rights." In the United States there have been instances when wealthy corporations have filed defamation suits and suits for "tortious interference with contractual relations" against individuals and small community groups that have gone to government regulatory agencies to voice their opposition to land use proposals, industrial projects, pollution, and other projects and conditions. Out of concern for this kind of retaliation, several states now have statutes or court rulings that enable such individuals to counter-sue the corporations for violating their civil right to petition government officials. These protections exist in both New York State and in Connecticut.

Law suits may also be undertaken against individual Trustees for being negligent in their fiduciary duties as Trustees. As a result of this possibility, the Trustees recently voted unanimously on changes to the JEI bylaws in an attempt to provide the Trustees with some protection from such law suits. These law suits may be undertaken by individual parents or groups of parents working separately from the PTA.